

(c) We may approve a lease that provides for the payment of less than a fair market rental during the periods before the generation and transmission of electricity begins, if we determine it is in the Indian landowners' best interest. The lease must specify the amount of the compensation and the applicable periods.

(d) We will require a valuation in accordance with §162.422, unless:

(1) 100 percent of the landowners submit to us a written request to waive the valuation requirement; or

(2) We waive the requirement under paragraph (e) of this section; or

(3) We determine it is in the best interest of the Indian landowners to accept an economic analysis in lieu of an appraisal and:

(i) The Indian landowners submit an economic analysis that is approved by the Office of Indian Energy & Economic Development (IEED); or

(ii) IEED prepares an economic analysis at the request of the Indian landowners.

(e) If the owners of the applicable percentage of interests under §162.011 of this part grant a WSR lease on behalf of all of the Indian landowners of a fractionated tract, the lease must provide that the non-consenting Indian landowners, and those on whose behalf we have consented, receive a fair market rental, as determined by a valuation, unless we waive the requirement because the tribe or lessee will construct infrastructure improvements on, or serving, the leased premises, and we determine it is in the best interest of all the landowners.

§ 162.551 How will BIA determine fair market rental for a WSR lease?

(a) We will use a market analysis, appraisal, or other appropriate valuation method to determine the fair market rental before we approve a WSR lease of individually owned Indian land or, at the request of the tribe, for tribal land.

(b) We will either:

(1) Prepare, or have prepared, a market analysis, appraisal, or other appropriate valuation method; or

(2) Use an approved market analysis, appraisal, or other appropriate valuation method from the Indian landowners or lessee.

(c) We will use or approve use of a market analysis, appraisal, or other appropriate valuation method only if it:

(1) Has been prepared in accordance with USPAP or a valuation method developed by the Secretary under 25 U.S.C. 2214; and

(2) Complies with Department policies regarding appraisals, including third-party appraisals.

(d) Indian landowners may use competitive bidding as a valuation method.

§ 162.552 When are monetary compensation payments due under a WSR lease?

(a) A WSR lease must specify the dates on which all payments are due.

(b) Unless the lease provides otherwise, payments may not be made or accepted more than one year in advance of the due date.

(c) Payments are due at the time specified in the lease, regardless of whether the lessee receives an advance billing or other notice that a payment is due.

§ 162.553 Must a WSR lease specify who receives monetary compensation payments?

(a) A WSR lease must specify whether the lessee will make payments directly to the Indian landowners (direct pay) or to us on their behalf.

(b) The lessee may make payments directly to the Indian landowners if:

(1) The Indian landowners' trust accounts are unencumbered;

(2) There are 10 or fewer beneficial owners; and

(3) One hundred percent of the beneficial owners (including those on whose behalf we have consented) agree to receive payment directly from the lessee at the start of the lease.

(c) If the lease provides that the lessee will directly pay the Indian landowners, then:

(1) The lease must include provisions for proof of payment upon our request.

(2) When we consent on behalf of an Indian landowner, the lessee must make payment to us on behalf of that landowner.

(3) The lessee must send direct payments to the parties and addresses specified in the lease, unless the lessee